

HOUSE BILL 324
By Hood

AN ACT to enact the Rutherford County Adequate Facilities Tax.

WHEREAS, Rutherford County, is one of the fastest growing counties in the state for the past fifteen (15) years, having been impacted by the rapid growth in the standard metropolitan area of Nashville; and

WHEREAS, anticipated continued growth from the expansion of Nashville is expected to accelerate from various factors; and

WHEREAS, the projected non-residential development and the availability of jobs is anticipated to stimulate a significant demand for new dwelling units in Rutherford County; and

WHEREAS, current projections show that:

(1) projected growth and land use development will cause a demand for county provided capital facilities (schools, roads, jails, parks, county government facilities, etc.) over the next fifteen (15) years;

(2) the county's present revenue raising authority is limited and relies heavily on intergovernmental transfers which are not subject to county control and on property taxes, which would impose the costs of new growth on existing residents rather than on new residents and businesses who create the demand for the additional expenditures; and

WHEREAS, Rutherford County is committed to both present and future county residents to maintaining a level of public facilities and services commensurate with those presently provided; and

WHEREAS, Rutherford County is prepared to impose a fair, equitable, and reasonable share of the cost of providing the necessary public facilities and services on existing residents of the county; and

WHEREAS, the county's present population, employment base, tax base, and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, due to these unique circumstances, it is necessary and appropriate that Rutherford County be given authorization to extend its taxing power to enable the county to impose a fair and reasonable share of the cost of public facilities necessitated by new development on that development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the state for such additional tax measures to impose costs on those who benefit from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development in Rutherford County; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Rutherford County Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning clearly appears from the context:

(a) "Board of Adjustments and Appeals" means the Board established in Rutherford County pursuant the requirements of the Southern Standard Building Congress.

(b) "Building" means any structure built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind; the term includes a mobile home. This does not pertain to buildings used for agricultural purposes.

(c) "Building Permit" means a permit for development issued in Rutherford County, whether by the county or any city therein.

(d) "Capital Improvement Program" means a proposed schedule of future projects, listed in order of construction priority, together with cost estimates and the anticipated means of financing each project. All major projects requiring the expenditure of public funds, over and above the annual local government operating expenses, for the purchase, construction, or replacement of the physical assets of the community are included.

(e) "Certificate of Occupancy" means a license for occupancy of a building or structure issued in the Rutherford County, whether issued by the county or any city therein.

(f) "Development" means the construction, building, reconstruction, erection, extension, betterment or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, which provides, adds to or increases the floor area for residential or non-residential use.

(g) "Dwelling Unit" means a room or rooms, connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease, on a daily, weekly, monthly, or longer basis; physically separated from any other room or rooms or dwelling units which may be in the same structure; and containing independent cooking and sleeping facilities.

(h)

(1) "Floor Area" for non-residential development means the total of the gross horizontal area of all floors, including usable basements and cellars below the roof and within the outer surface of the main walls of principal or accessory buildings or center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes, and similar open areas which are accessible to the general public, and which are not designed or used as sales, display, storage, service, or production areas.

(2) "Floor Area" for residential development means the total of the gross horizontal area of all floors, including basements, cellars, and attics, below the roof and within the outer surface of the main walls of principal buildings or center lines of party walls separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roof line of any building or portions thereof without walls, but excluding arcades, porticoes, patios, decks and similar open areas accessible to the owners.

(i) "General Plan" means the official statement of the planning commission, which sets forth major policies concerning future development of the jurisdictional area and meeting the provisions set forth in Tennessee Code Annotated, Sections 13-3-301, 13-3-302, and 13-4-102. For purposes of this act only, a general plan may consist solely of the land development plan element which sets out a plan or scheme of future land usage.

(j) "Governing Body" means the county commission of Rutherford County.

(k) "Major Street or Road Plan" means the plan adopted by the planning commission, pursuant to Tennessee Code Annotated, Sections 13-3-402 and 13-4-302, showing, among other things, the general location, character, and extent of public ways and the removal, relocation, extension, widening, narrowing, abandonment, or change of use of existing public ways.

(l) "Non-Residential" means the development of any property for any use other than residential use, except as may be exempted by this act.

(m) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, in the plural as well as the singular number.

(n) "Place of Worship" means that portion of a building, owned by a religious institution which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related

functions or which are or are intended to be leased, rented, or used by persons who do not have tax-exempt status, or which serve as a residence.

(o) "Public Building" means a building owned by the state or any agency thereof, a political subdivision of the state, including, but not necessarily limited to, counties, cities, school districts, and special districts, or the federal government or any agency thereof.

(p) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, wastewater and drainage projects, airport facilities, and any other governmental capital improvement benefiting the citizens of the county and/or city.

(q) "Residential" means the development of any property for a dwelling unit or units.

(r) "Subdivision Regulations" means the regulations adopted by the Rutherford County regional planning commission pursuant to state statutory authorization by which the county regulates the subdivision of land.

(s) "Zoning Resolution" means the resolution adopted by the governing body pursuant to the state statutory authorization on May 14, 1984, as amended, by which the county regulates the zoning, use, and development of property.

SECTION 3. It is the intent and purpose of this act to authorize Rutherford County to impose a tax on new development in the county so as to ensure and require that the persons responsible for new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of new development in Rutherford County, except as provided in Section 6 herein, is declared to be a privilege upon which Rutherford County may, by resolution of the governing body of Rutherford County, levy a tax in an amount to be determined by resolution of the governing body.

SECTION 5. The governing body shall impose the tax authorized herein by resolution after adopting a capital improvements program indicating the need for the cost of public facilities anticipated to be funded, in part, by this tax and after finding that the need for such public facilities is reasonably related to new development in the county. The resolution of the governing body imposing this tax shall state the rate of tax on new residential and non-residential development in accordance with Section 7. The governing body shall, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

- (a) Places of worship;
- (b) Barns or outbuildings used for agricultural purposes;
- (c) Replacement structures for previously existing structures destroyed by fire or other disasters;
- (d) A structure owned by an entity exempt from tax under § 501(c)(3) of the Internal Revenue Code;
- (e) Permanent residential structures replacing mobile home where the mobile home is removed within thirty (30) days of the issuance of the certificate of occupancy for the permanent residential structure, providing that the permanent structure is a residence for the owner and occupant of the mobile home and that owner and occupant has resided on the property for a period of not less than three (3) years; or
- (f) Buildings moved from one site within the county to another site within the county.

SECTION 7. For the exercise of the privilege described herein, the legislative body of Rutherford County may impose a tax on new development as follows:

The initial tax on new residential development shall be one dollar (\$1.00) per gross square foot of floor area, with a minimum tax of seven hundred fifty dollars (\$750) per dwelling unit. The amount of tax on new residential development may be increased or decreased upon a two-thirds (2/3) vote of the governing body, but the tax on new

residential development shall not exceed two dollars (\$2.00) per gross square foot of floor area.

The tax on new non-residential development shall be twenty five cents (25¢) per gross square foot of floor area.

The legislative body of Rutherford County may develop a tax rate schedule by which residential and non-residential uses are classified by type for the purpose of imposition of the tax authorized herein.

SECTION 8.

(a) The tax established in this act on new residential development where a final plat is recorded with the Office of the Register of Deeds shall be collected as follows:

(1) The minimum tax of seven hundred fifty dollars (\$750) shall be collected by the Office of the Register of Deeds at the time the final plat is recorded. The remainder of the tax due shall be collected at the time of application for a building permit for development by a county official duly authorized by the county mayor.

(2) The tax established in this act on new residential development where no final plat is recorded shall be collected at the time of application for a building permit for development by a county official duly authorized by the county mayor.

(b) The tax established in this act on new non-residential development shall be collected at the time of application for a building permit for development by a county official duly authorized by the county mayor.

If the building permit is issued by the county, the county building official or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county. If the building permit is issued by a city, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building inspector that the full amount of the tax due the county is paid. No building permit shall be issued unless the tax has been paid in full to the county or a negotiable instrument payable to the county has been received. The issuance of a building permit by any city official, without a certificate from the county that

the tax has been paid, shall render the city liable to the county for the sum or sums, that would have been collected by the county had the certificate of tax paid been required by the city.

SECTION 9. All tax funds collected shall be used for the purpose of providing public facilities, the need for which is reasonably related to new development.

SECTION 10. The authority to impose the privilege tax or taxes on new development in Rutherford County is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land-development regulatory measures granted either by the private or public acts of the state and the imposition of such tax, in addition to any other authorized taxes, fees assessments, or charges, shall not be deemed to constitute double taxation.

The imposition of this tax shall not apply to new development for which any person has paid a portion or all of the Rutherford County development tax prior to this act becoming law.

SECTION 11.

(a) Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Rutherford County and by notifying the official that the payment is made under protest; and

(2) By requesting an appeal of the decision of the official in written form within ten (10) days of the protest and payment. Appeals shall be heard by the Rutherford County board of adjustment and appeals. A hearing shall be scheduled within forty-five (45) days of the written request for appeal.

(b)The board of adjustment and appeals shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time with a majority vote of the board for further information.

(c) The board of adjustment and appeals shall act as a quasi-judicial body, whose purpose is to determine the intent of this act, its applicability to the appellant, and to rule upon the interpretation of the official. The board shall not be bound by formal rules of evidence applicable to the various courts of the state.

(d) Hearings before the board shall proceed as follows:

(1) The county building official shall explain his or her ruling and the reasons for the ruling.

(2) The appellant shall explain his or her reasons for protesting the ruling.

(3) The board may request further information from any county official, including, but not limited to the county mayor, county commissioners, committee members, the county attorney, or the county planning staff. The board shall not have the power of subpoena.

(e) The board shall deliberate and render a decision by a majority vote. Decisions shall be reduced to writing, and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the board of adjustment and appeals shall be final, except that either the building official or the person aggrieved may seek review of the Board's action by certiorari and supersedeas to the chancery court of Rutherford County, provided, that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify, or interfere with the authority granted by any other public or private law applicable to Rutherford County. This act shall be deemed to create an additional and alternative method for Rutherford County to impose and collect taxes for the purpose of providing public facilities made necessary by new development in the county and/or any of its cities.

SECTION 13. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by two-thirds (2/3) vote of the county legislative body of Rutherford County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by such officer to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 14